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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

AZ CORP COMMISSION  
DOCKET CONTROL

SEP 18 2008

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
ARIZONA WATER COMPANY TO EXTEND ITS  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY IN CASA GRANDE, PINAL  
COUNTY, ARIZONA.

DOCKET NO. W-01445A-03-0559

**PROCEDURAL ORDER SETTING  
HEARING DATE**

**BY THE COMMISSION:**

On July 30, 2007, the Arizona Corporation Commission ("Commission") issued Decision No. 69722. Decision No. 69722 extended the deadline for compliance with the conditions of Decision No. 66893 (April 6, 2004) to July 30, 2007, and ordered that for purposes of compliance, Arizona Water Company ("AWC") has fulfilled the conditions set forth in Decision No. 66893 for an extension to its Certificate of Convenience and Necessity ("CC&N"). Decision No. 69722 found that there may not be a current need or necessity for water service in the portions of the extension area that are owned by Cornman Tweedy 560, LLC ("Cornman"); that Cornman does not wish to have its property included in AWC's CC&N at this time; and that these issues bear further examination and may have some relevance to the best interests of the area ultimately to be served. Decision No. 69722 therefore remanded this case to the Hearing Division for further proceedings regarding whether AWC should continue at this time to hold a CC&N for the area depicted in Exhibit B to that Decision (the Cornman extension area).

Decision No. 69722 stated that as the CC&N holder, AWC is entitled to appropriate notice and an opportunity to be heard, and that the proceeding on remand will be for the purpose of considering whether the Cornman property should be deleted from the CC&N extension granted to AWC by Decision No. 66893. Decision No. 69722 further stated that the proceeding on remand should be broad in scope so that the Commission may develop a record to consider the overall public

1 interest underlying service to the Cornman property that is included in the extension area granted by  
2 Decision No. 66893. In Decision No. 69722, this Commission stated that by identifying these issues  
3 and requiring further proceedings, the Commission is not prejudging this matter in any way; instead,  
4 the Commission merely desires an opportunity to consider the broader public interests implicated in  
5 Decision No. 69722.

6 On August 17, 2007, Cornman filed an Application for Rehearing and Reconsideration of  
7 Decision No. 69722. The Commission took no action thereon.

8 A Procedural Conference convened on October 16, 2007, for the purpose of allowing the  
9 parties to Decision No. 69722 an opportunity to discuss a suitable hearing date and associated  
10 procedural schedule, and other procedural matters related to the remand proceeding. AWC,  
11 Cornman, and the Commission's Utilities Division Staff ("Staff") appeared through counsel. At that  
12 time, AWC and Cornman disagreed regarding the need for the presentation of additional facts in the  
13 remand proceeding. They also disagreed regarding the burden of proof.

14 A Procedural Order dated November 8, 2007, concluded that because the Commission  
15 previously determined that it is in the public interest for AWC to hold the CC&N for the Cornman  
16 extension area and that AWC is a fit and proper entity to provide water utility service to the Cornman  
17 extension area, the determination to reopen the record did not place the burden on AWC to  
18 demonstrate that it should continue to hold a CC&N for the Cornman extension area. The November  
19 8, 2007, Procedural Order found further that it is appropriate "to allow Cornman ample opportunity to  
20 present additional relevant evidence that Cornman believes may be necessary to inform the  
21 Commission's decision in this remand proceeding regarding whether AWC should continue to hold a  
22 CC&N at this time for the Cornman extension area." The Procedural Order set the matter for hearing  
23 to commence February 14, 2008, and established a schedule for pre-filed written testimony.

24 On January 4, 2008, Cornman filed the Direct Testimony of Jim Poulos, Dr. Fred Goldman  
25 and Paul Hendricks. The same date, AWC filed the Direct Testimony and Exhibits of William  
26 Garfield.

27 On February 4, 2008, a Procedural Order was issued granting a request by AWC and  
28 Cornman to extend the date for the filing of rebuttal testimony from February 1, 2008, to February 5,

1 2008. The Procedural Order also granted a request by AWC to continue the commencement of the  
2 remand hearing from February 14, 2008, to February 15, 2008.

3 On January 18, 2008, Staff filed the Rebuttal Testimony of Steven Olea.

4 On February 5, 2008, Cornman filed the Rebuttal Testimony of Mr. Poulos and Dr. Goldman.

5 Also on February 5, 2008, AWC filed the Rebuttal Testimony of Mr. Garfield and Frederick  
6 Schneider.

7 On February 7, 2008, AWC filed "Arizona Water Company's Motion to Strike Cornman  
8 Tweedy's Irrelevant Testimony and Exhibits" ("Motion to Strike").

9 On February 8, 2008, Cornman filed "Cornman Tweedy's Motion for Modification of  
10 Procedural Schedule (Expedited Relief Requested)." Following a telephonic procedural conference,  
11 a Procedural Order dated February 12, 2008, granted an extension of time to file pre-hearing briefs,  
12 established deadlines to respond to the Motion to Strike, continued the hearing date indefinitely  
13 pending further order, and set oral argument on the Motion to Strike for February 22, 2008.

14 On February 15, 2008, AWC filed its Pre-Hearing Brief addressing the legal standard under  
15 Arizona law for granting the relief being sought in the remand proceeding; Cornman filed a Response  
16 to AWC's Motion to Strike and Pre-Hearing Brief on Legal Issues; and Staff filed its Pre-Hearing  
17 Brief and Response to Arizona Water Company's Motion to Strike ("Staff Response").

18 On February 19, 2008, AWC filed a Reply in Support of Motion to Strike.

19 The Procedural Conference for oral argument on the Motion to Strike convened as scheduled  
20 on February 22, 2008. AWC, Cornman, and Staff appeared through counsel and presented oral  
21 argument.

22 By Procedural Order issued September 5, 2008, the Motion to Strike was denied and a  
23 procedural conference was set for September 17, 2008 for the purpose of scheduling a date for the  
24 continuation of the remand hearing ordered by Decision No. 69722.

25 A Procedural Conference was held as scheduled on September 17, 2008. AWC, Cornman and  
26 Staff appeared through counsel and discussed witness and counsel availability and possible hearing  
27 dates. The parties agreed that no further pre-hearing filings are necessary. A date for continuation of  
28 the hearing should therefore be set at this time.

1 IT IS THEREFORE ORDERED that the **remand hearing** in this matter is **hereby continued**  
2 **to December 15, 2008, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's  
3 offices, 1200 West Washington Street, Phoenix, Arizona 85007. **If an additional day of hearing is**  
4 **required**, the hearing shall **reconvene on December 19, 2008**, commencing at **9:30 a.m.**

5 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
6 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
7 *pro hac vice*.

8 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
9 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
10 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances  
11 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
12 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
13 Administrative Law Judge or the Commission.

14 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
15 Communications) continues to apply to this proceeding and shall remain in effect until the  
16 Commission's Decision in this matter is final and non-appealable.

17 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended  
18 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

19 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
20 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
21 hearing.

22 Dated this 18<sup>th</sup> day of September, 2008.

23  
24   
25 TEENA WOLFE  
26 ADMINISTRATIVE LAW JUDGE  
27  
28

1 The foregoing was mailed/delivered  
2 this 18th day of September, 2008 to:

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By: 

Debra Broyles  
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